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OCT 28 2005

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
Leonard Green
Clerk

Hershel Slaughter, Jr.,

Petitioner

vs.

Wanza Jackson,

Respondent.

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Case Number: 1:01-cv-00868

FILED

OCT 28 2005

**REQUEST FOR A CERTIFICATE OF
APPEALABILITY**

JAMES BONINI, Clerk
CINCINNATI, OHIO

The Petitioner, Hershel Slaughter, Jr., has filed a Writ of Habeas Corpus Petition pursuant to 28 U.S.C. § 2254 (doc. 1). Following a jury trial in the Hamilton County, Ohio Court of Common Pleas, Petitioner was convicted of two counts of aggravated murder, one count of aggravated burglary, and one count of aggravated robbery (doc. 14). The court sentenced Petitioner to consecutive terms of life with parole eligibility after thirty years for aggravated murder and ten years of incarceration for aggravated robbery (Id.).

Petitioner filed a writ of Habeas Corpus on theories of ineffective assistance of counsel, unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant, and insufficiency of evidence. (Id.).

On May 14, 2004, the Magistrate Judge issued his Report and Recommendation, recommending Petitioner's petition for writ of habeas corpus be denied with prejudice (doc. 14).

I. The Magistrate Judge found that Petitioner has waived his first ground for relief and part of his second ground for relief due to procedural defaults committed in state court (Id.). The Magistrate Judge found that Petitioner's first ground for relief, his claim for ineffective assistance of trial counsel, was not raised on direct appeal to the Ohio Supreme Court (Id.). The Magistrate Judge further found that Petitioner failed to provide any justification for the procedural default of his claim that the state withheld evidence (Id.).

The Magistrate Judge concluded Petitioner waived these grounds for relief for purposes of federal habeas corpus review because he did not provide the highest state court in Ohio with an opportunity to correct any alleged constitutional error.

Next, the Magistrate Judge found Petitioner is not entitled to habeas corpus relief based on claims that the waiver of his Miranda rights and the statements he made to police were involuntary or unintelligent, as asserted in his second ground for relief (Id.). The Magistrate Judge found that Petitioner was informed of his Miranda rights on several occasions, when he was taken into custody, when he arrived at the station for questioning and when a second interview commenced by a new detective (Id.). The Magistrate Judge further noted that Petitioner signed and initialed a written waiver form, that he indicated he understood, that he had a GED, and that despite the fact he smelled of alcohol, there is no evidence he was so intoxicated he could not understand his rights or that he was waiving them (Id.).

II. The Magistrate Judge made this determination without first, searching to validate Petitioner's claim of being so intoxicated that he was not in his right mind, and that any statements made in such an impaired state, could not demonstrate he made any statements understanding his rights, while in such a intoxicated state.

The interviewing officer's could have done more to make sure that they were taking those statements, while protecting a persons rights, instead of asking an intoxicated persons questions that was meaningless to a person in such a state.

But, instead of securing Petitioner's rights, the interviewing officer pressed forward with their interview and illiciting damning information that would condemn one whom is truly innocent of the alleged crimes.

The interviewing officer's smelled a strong smell of alcohol on Petitioner, and should have known that Petitioner was a heavy drug user, because he was on probation at the time for Drug Abuse, and having in his possession drug paraphernalia, which he used in committing drug abuse.

These clues should have alerted officer's that to proceed with their interview at that time would infringe on Petitioner's rights of clearly understanding his Miranda rights, that are protected under the United States Constitution, but in most case's of Defendant's whom is poor, and uneducated, they could have felt that it would never be challenged, and if challenged, like in Petitioner's situation, their challenge would most likely be unsuccessful, as seem to be the case in Petitioner's situation again.

Therefore, in the interest of justice, Petitioner prays that the Sixth Circuit will grant petitioner request for a certificate of appealability, and conduct an evidentiary hearing to determine once and for all if what petitioner has been alleging all this time has any truth to the matter.

The only evidence that connect petitioner to any crime, is the statements Petitioner made while heavily intoxicated, and under the influence of drugs. Petitioner, prays that this Court will see fit to grant his request, for the interest of justice.

In the alternative, Petitioner prays that this Court will Stay the proceedings,

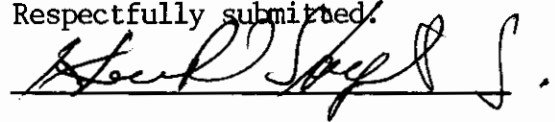
to allow him to return back to the state courts to fully exhaust any and all unexhausted claims of ineffective assistance of allelate counsel, and prosecutorial misconduct which District Court asserts that were procedural defaulted in state court.

Petitioner now realize's that without his proceeding being stayed in this Court, or dismissed without prejudice, his opportunity of being exonerated of this wrongful conviction will pass him up.

Petitioner prays this Court to realize that he is acting in the form of Pro Se, and is unfamiliar with law, and is learning as he go, and because of his lack of knowledge, he is limited in research ablilty's, and because of his nature of confinement, being in a close security prison, his access to legal material is limited.

Petitioner is not asking this Court to ignore the finality doctrine of a Judgment, but Petitioner believes that this Court has the authority, and power to stay a proceeding, or dismiss a proceeding without prejudice, to allow him to return back to state court, and fully exhaust those claims that the district court asserted that has been procedural defaulted, and return after issue's has been preserved. It is so prayed.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "H. P. S. J.", written over a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Jim Petro, Attorney General
office

was sent to the State of Ohio county, Prosecutor Jim Petro

at 140 E. Town St., Suite 1400, Columbus, Ohio 43215

by U.S. Mail on the 22 day of October, 2004⁵.



Defendant, *Pro Se*